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AT THE ORDINARY GENERAL MEETING

Held at the Chartered Surveyors' Institution on Monday, 6th January, 1936.

Mr. HARRY M. STANLEY (President) in the Chair.

A DISCUSSION took place on

THE RATING OF EMPTY PROPERTIES.

The PRESIDENT explained that the object of the meeting was to discuss a subject of very great interest at the present time, the rating of empty properties. The Institution was fortunate in having present Mr. Charles Latham (Chairman of the Finance Committee of the London County Council) and Mr. F. C. R. Douglas, M.A., F.R.A.S., L.C.C., who would speak in favour of the motion, whilst Colonel Sir George Courthope, Bt., M.C., M.P. (Associate of Council), and Mr. R. C. Dewar Jenkins, L.C.C., would speak in opposition.

Before introducing the speakers, he would like to emphasise that the Chartered Surveyors' Institution was entirely non-political, and it was very important that it should continue to be so. He did not think that the subject of discussion lent itself to politics or to political allusion, but in any case he would ask

the speakers not to introduce any political matter into what they had to say on the merits of the question.

He would ask Mr. Charles Latham to open the discussion.

Mr. CHARLES LATHAM (Chairman of the Finance Committee of the L.C.C.) (Visitor) congratulated the Institution on its public-spirited action in facilitating a non-political discussion which not only necessarily closely concerned the objects and purposes of the Institution but was of very great and wide importance to the public generally. He felt sure that those who took part in the debate from the platform would feel an added pleasure that it was to be on a non-political basis. Some of them were on other occasions frequently compelled to discuss public problems perhaps too narrowly from a political point of view.

The subject for discussion that evening was the action of the London County Council in promoting legislation to secure for the County of London (excluding the City of London) the power to rate empty properties, and the proposal which had now been embodied in a deposited Bill was that empty properties, like other properties, should attract ordinary rates, with the proviso that with respect to empty properties there should be an abatement of 75 per cent., which, in short, meant that empty properties, subject to the exemptions and provisions of the Bill, would pay 25 per cent. of the rates normally levied.

That percentage had been determined principally by relation to the cost of providing those services which, in the opinion of the promoters of the Bill and of many other persons, were shared by empty properties in, roughly speaking, as substantial a degree as they were shared and benefited from by properties which were occupied. Without claiming that the list was wholly inclusive, regard had been had to the cost of providing police services, fire brigade services, public lighting, means of access to property—highways—and drainage, both main drainage and local drainage. In the County of London, excluding grants under the 1929 Act and adjustments flowing from them, in the year 1933/34 the cost of providing those services represented roughly 27 per cent. of the total rates levied and paid. The promoters of the Bill were of opinion that it was essential if the lettability of empty properties was to be maintained that those services should be provided, and that properties would not let so readily if upon their becoming empty those services were no longer available to them. In view of the short time available he did not propose to go into the services which were rendered by the police or by the fire brigade or in public lighting, but they would, of course, be obvious to an audience of surveyors.

He would like to clear up some misunderstandings as to the

intentions of the proposal. It was not sought, as had been suggested by, if he might say so, obviously uninformed opinion, to penalise the owners of empty property. There was no desire on the part of the present London County Council to penalise the owners of empty property ; nor was it sought to fine them because their property was empty ; nor was it the primary purpose of the promoted legislation to lower rents. It might be—experience alone would show if the proposal was approved by Parliament—that where property was unreasonably withheld in order to get a rent in excess of what normally the property was worth, the added burden which would fall on the owner as a result of his having to pay rates to the extent of 25 per cent. of the normal would lead to a reduction of rent in the case of that kind of property, but that was not the object of the proposed legislation. Its object was to secure that empty properties should make a fair and reasonable contribution to the services which local government had to provide. At present the cost of those services was borne by those whose property was not empty, and it was held that thereby an excessive burden fell on those paying rates for occupied properties because of the non-payment of rates in respect of unoccupied properties.

The deposited Bill provided, he thought, for most of the cases of hardship and difficulties of administration which might otherwise arise. With regard to new buildings it was proposed that they should be given six months' exemption from the rate, the six months to run from the date when they first appeared in the valuation list. He thought that provision met the apprehension, which might otherwise be well founded, that the imposition of such a rate might discourage building. Where property was to be redeveloped, and because of that it remained unoccupied for some time, upon notice being given to the appropriate authority such property would remain unrated for empty property rate for a period not exceeding two years, with the necessary proviso that if at any time the owner changed his mind and the property was re-occupied the empty rate would be retrospectively applied. He thought it would be agreed that a period of two years gave the owner who intended to redevelop property a reasonable time in which to do so. In the same way properties which were vacated by reason of closing and demolition orders and the like would be exempt from the rate. Where, as was sometimes the case, negotiations for the sale or letting of a property were delayed unavoidably, limited exemption could be obtained by application to the appropriate authority, except in the case of residential property.

He thought it would be conceded that those main exceptions ought to meet, and they were indeed designed to meet, most cases of hardship which otherwise might arise.

The method of recovery proposed was the method which was followed in the City of London, where, as was well known, the rating of empty properties had been in force for some time. It was against the owner by way of distress if payment was not otherwise made, or as a civil debt, with rights also against the subsequent occupier or occupiers. It was intended, with regard to the occupiers, that if they did not pay, and the owner had not paid, the rating authority should stand in the shoes of the landlord and have all the rights with regard to recovery from the occupier in respect of the unpaid rates that the landlord would have in respect of the non-payment of his rent.

That, briefly, was the proposal which was embodied in the Bill. He would like to add, without any desire to introduce politics, that that proposal did not originate with the London County Council as at present constituted. As far back as 1898 the then Council represented to the Royal Commission on Local Taxation the justice and desirability of rating empty properties, and the majority of that Commission recommended that there should be a partial rating of empty properties. Later, in 1923, the then existing Council made representations to the Government, asking that general legislation might be introduced to provide for the rating of empty properties at 25 per cent. When the Rating and Valuation Bill was before the House of Commons in 1925, the London County Council, with the support of many of, if not all, the Metropolitan Borough Councils, sought to amend that Bill to include provision for rating empty properties. An amendment was put down which, however, was rejected at the instance of the then Minister of Health, Mr. Neville Chamberlain. Later in that year, following a conference between the County Council and the Metropolitan Boroughs, a further attempt was made on report stage to amend the Bill so as to give local authorities the power to rate empty properties at 25 per cent., but, as was well known, the Bill was subsequently amended so that London was excluded from its ambit, and therefore the amendment moved on behalf of the County Council was out of order.

The City of London had had powers to rate empty properties since 1839, and did at present rate empty property at half the general rate, which excluded the poor rate, and in 1934/35 amounted, he believed, to 1*s.* 0½*d.* in the £. It was estimated that 25 per cent. of the county rate, excluding the City, would be between 2*s.* 8*d.* and 3*s.* in the £. In Scotland, probably as a result of the different law of rating operating there, the owner had for a long time been subject to rates on property whether occupied or not, and he was informed that in 1933/34 this amounted to 6*s.* 2*d.* out of 13*s.* 8*d.*, or about 45 per cent. More-

over, in London prior to 1855 many local authorities had power to rate empty properties, and under an enactment as recent as 1930, namely, the Drainage Act of that year, drainage rates were levied on properties whether they were occupied or not.

The question arose as to why, admitting, if it were admitted, the justice of rating empty properties, London alone had been singled out for its beneficent operation. As a matter of fact, London had done as much as it could to secure general legislation on the subject. On the other hand, as was well known, London had legislatively certain special characteristics. Some of them were of advantage to London and some were not. In regard to the law of rating, London was still subject to laws which no longer applied to the rest of the country, and, right through the legislation affecting London local government, one would find striking, important and, indeed, fundamental differences from the legislation applying outside London. The position in London was very acute ; there was a very substantial yearly loss by reason of empty properties not bearing any rates, and therefore a substantial addition to the money which had to be provided by the properties which were occupied.

In parenthesis he would like to add that there was no intention, in promoting the legislation in question, of raiding another hen-roost ; it was not promoted because the present London County Council, any more than past London County Councils, wished to add necessarily to their income. They wished in the past, and they wished now, to secure a just and fair allocation of the cost of providing the services which it was their duty to perform.

In conclusion he would like to refer briefly to one or two of the objections. In 1925 Mr. Neville Chamberlain, in opposing the Council's amendment in the House of Commons, said that this proposal amounted to a fundamental alteration in the law of rating. Personally he did not accept that statement ; he did not think that to extend the operation of the law of rating in the manner proposed affected any fundamental change in the law of rating. It might be a far-reaching change and it might be an important change, but it did not fundamentally alter the law of rating any more than did the exemptions from time to time granted to agricultural land, or the derating proposals which were applied to industrial and transport undertakings, or the proposal to value railways *in cumulo*, or the provisions in the 1925 Act distinguishing between " motive " machinery and " process " machinery.

The question had been raised of how it was proposed to determine the valuation of empty properties. No proposal was made in the Bill to deal with valuation at all. Empty properties were at present included in the valuation list, and it was not proposed in the Bill, nor was it thought likely to be necessary, that any

different valuation would be necessary or that there would be any difficulty necessarily arising in that regard.

The objection had been raised that, under the proposal, industrial and transport hereditaments, at present derated and only paying, therefore, 25 per cent. rates, would pay as much when they were empty as when they were not. There was nothing essentially wrong in that. Derating depended, as was well known, not on the premises but on the user of the premises ; it was not a benefit which a particular premise attracted, but a benefit which flowed from the particular and special user to which it was put. When such premises were empty it could not be said that they were used for industrial and transport hereditaments within the 1929 Act, and there would therefore appear to be no case for their receiving any special exemption from the proposals in question.

A further objection had been made which at first sight might appear to have some substance, but which on independent examination would be found, he thought, to be fallacious, namely, that the imposition of what was termed a new burden on empty properties would lower rents generally. In his submission it was the bulk, the number, the weight of " empties " which reduced rents, if rents were reduced by that factor ; and the imposition of a 25 per cent. rate on empty properties was not likely, in normal circumstances, to have any serious influence upon the course of rents generally for properties.

He feared he had somewhat exceeded the time allotted to him, but he hoped he had made clear, as far as was possible in the limited time available, the main provisions of the proposal. He had dealt, though not exhaustively, with some of the principal objections made against it, and he hoped that in the course of the discussion the question would be further clarified, and that general benefit would be derived from a non-political and objective consideration of the proposal.

The PRESIDENT then called on Colonel Sir George Courthope, Bt., M.C., M.P. (Associate of Council, the Chartered Surveyors' Institution), to speak in opposition.

Colonel Sir GEORGE COURTHOPE, at the commencement of his remarks, thanked the President most cordially for the compliment which had been paid him in allowing him to fire the first shot at the Bill promoted by the London County Council, the London Rating (Unoccupied Hereditaments) Bill. Owing to the limited time available he would not repeat the word " heredita- " ments," but would talk about " empties." It was a great compliment that he should be allowed to speak on so technical and important a subject before a great gathering of members of

the surveyors' profession, of which the President was the honoured head, and he appreciated it very much.

He had listened with the greatest interest to Mr. Latham's exposition or defence—one might almost say his apologia—for the Bill, and he would like to compliment him, if he might do so without impertinence, on having made the very best of a very bad case. Personally he thought that if a new system of rating was being started *de novo* for the whole country the merits of the general lines of the Bill might be arguable, but even then he would feel inclined, if he were permitted to do so, to have a shot at it. Nothing of the kind, however, was proposed ; there was no question of a new system of general application ; the Bill proposed in one area only to substitute for a system set up by the Rating Act of 1601, and reinforced during the succeeding three and a third centuries by countless Acts of Parliament, both general and local, and also by many decisions of the Courts, a wholly different system, namely, roughly speaking, that of benefit, as embodied in the old Statute of Sewers.

The Rating Act of 1601, and the subsequent statutes on the same lines, laid it down quite definitely and clearly that rates were a personal charge on the occupier, whose occupation must be beneficial, permanent and exclusive. It was quite impossible to bring the owner of an " empty " within that definition. He knew it would be said that there were exceptions, and he was surprised that something had not been said about the old sewer scot of the City of London, which he believed for the sake of convenience of collection had been embodied for some time past in the general rate. He had also heard arguments based upon the compound ratepayer. As was well known, compound ratepayers were the owner of small cottages and of tenements in cities, where the practice had been to collect rents weekly, and the owner compounded with the local authority for the payment of the rates and received a commission for so doing. It was really a case of agency and not of the rating of an owner at all. The fact that the compound ratepayer, namely, the landlord, paid the rates on his cottages in those circumstances whether they were occupied or not was no real argument in favour of the principal of the Bill which was now under discussion.

The principal objection to the Bill, in his opinion, was that if an alteration was to be made in a system of rating which had had the support of Parliament and of the Courts for so long a time it must be done generally and in a public statute. It was quite unthinkable, to his mind, that so great an alteration of principle should be tolerated in a private Bill applicable to a limited area, however important that limited area might be, and a Bill proposed by a local authority, though that authority might be one of the

greatest local authorities in the world. There must be public legislation if the amendment of the existing law was to be tolerable at all.

That, he thought, was the greatest objection to the Bill, an important objection of principle, but in view of the limited time at his disposal he did not intend to enlarge on that because there were two or three minor matters to which he desired to refer. There was, first of all, a matter raised by Mr. Latham in his speech. Mr. Latham said that one of the objects of the London County Council in promoting the Bill was to maintain the lettable value of property. In that connection it was of interest to turn for a moment to what might be called precedent or experience and see what had happened to the lettable value of property in those parts of the world where a similar system had been applied in the past.

The system was still applicable in parts of the United States of America and in parts of Canada, and the common practice there was that if a vacant building or house was not re-let very quickly it was pulled down to avoid the burden of the rates levied on the owner of the empty. He did not imagine that that was the way in which the London County Council would wish to maintain the lettable value of property. Mr. Latham had referred to Scotland, and in Scotland, as was well known, there was a landlord's rate and a tenant's rate, and the landlord paid the landlord's rate whether the property was occupied or empty. The landlord did not, of course, pay the tenant's rate when the property was empty because there was no tenant. Even in Scotland, however, in order to avoid the burden of the landlord's rate, the half rate, it was common practice to take the roof off an empty building ; and that again, he thought, was a method of maintaining the lettable value hardly suitable to the metropolis of the world.

Another question to which he desired to refer was that of collection—the method proposed in the Bill for collecting the rates. That, of course, presented an obvious difficulty to the promoters, because an owner who was not in occupation had nothing on which to distrain ; and therefore it was proposed that, if the rates on the empty were in arrears, they should be collected from an incoming tenant, and if necessary the authority should distrain upon him. It was difficult to imagine that that would encourage the letting of properties which had been vacant for some time ; the first thing that an incoming tenant might have to face would be a demand by the local authority for the landlord's arrears of rates on the empty, and, if the tenant did not pay them within a certain time, they could be collected from him by distraint.

He must apologise for dealing so briefly with those various points, each one of which would be capable of a good deal of development, but he wanted to mention one or two more. Under

the present system, if the owner became liable for rates on empties, he did not think it would be possible for Parliament to resist the claim of that owner to add the amount of those rates to his maintenance claim ; they would become a permissible expense for the purposes of his maintenance claim. If that assumption were correct, the only effect of passing the proposed Bill would be to transfer from the Exchequer those sums which were claimed by the local authority for rates on empties. It would be a case of robbing imperial Peter to pay local Paul, and he could not imagine that the representatives in the House of Commons of the taxpayers of the country would be likely to assent to any such proposal as that.

There was one final point which he would like to make. Almost every member of the surveyors' profession was concerned from time to time with the value of property from the point of view of investment and of mortgage. It was difficult to imagine anything more chaotic than the effect upon mortgage and investment which would result if there were a different system for the rating of empties in London from that applicable throughout the rest of England. He thought that it would upset the whole of the real property investment and mortgage market; and if that were done for so wealthy and important an area as the metropolis, he thought the results would be disastrous.

He had made notes of a number of other points, but he thought he had said enough to justify his contention that on the big point of principle and also on a number of points of detail the proposed Measure ought not to receive the approval of Parliament. He knew that, very wisely, the Chartered Surveyors' Institution would not take a decision on the point, and he did not ask that they should ; but he would like to assure the promoters of the Measure, and Mr. Latham, who had presented it that evening in the most favourable garb possible, in particular, that when the Bill came before the House of Commons for its second reading it would be received upon the floor with no lack of interest.

Mr. F. C. R. Douglas, M.A., F.R.A.S., L.C.C. (Visitor), who spoke in favour of the proposal, said he was very pleased to have the opportunity of taking part in a discussion which he was sure would be very useful to all those present. He was only too anxious to know what the objections were to the proposal which the London County Council had made, because it was desired to have the fullest and frankest discussion of the matter, so that the objections might be known and so that they might be met, if it were possible to meet them, or so that the Council might be convinced if the objections were sound ones.

Sir George Courthope had said that the proposal made a radical

change in the law of rating, that it introduced a principle which was at present alien to that law of rating, namely, that people should make some contribution to the local expenditure because of the benefit which they received from that local expenditure. Personally he would accept that criticism as correct, but he did not think that it was at all damaging ; on the contrary, it was really the fundamental principle of the Bill. The view held by those who supported the Bill was that the services which were provided by the public authority did maintain the value of property, whether the property was empty or whether it was occupied, and, if those services were taken away, the value of property in a great city such as London would decline almost to nothing. That argument had not been pressed too far ; the proposal was only for a very modest contribution towards the maintenance of services which undoubtedly did add to the lettable value of property. It was not said that the proposal would increase the lettable value of property, but that it would distribute the burden of maintaining the public services more equitably between those who were liable to pay for them.

No alteration was proposed in the method by which the rateable value of property was ascertained ; it would be ascertained under the Bill in exactly the same way as at present, and, indeed, the proposed rating of empty properties would not apply to any property which did not form an entry in the valuation lists and which, in fact, was not valued for assessment purposes at present. There was accordingly no question of any novelty with regard to valuation or the ascertainment of the value of property ; it was merely a question of redistributing to a certain extent the burden of local rates, which at present fell entirely on the occupiers of property and not at all on those properties which, for one reason or another, happened to be unoccupied. The extent to which the occupiers' burden had increased in London was on the average equal to a rate of 6*d.* in the £, and that was the contribution which the owners of unoccupied property would be asked to share to the extent of paying quarter rates upon the value of their properties.

It had been said that the proposal was one which ought to be introduced in a general measure which would apply to the whole of England and Wales, but that was not an objection which went to the merits of the proposal. It might be desirable that it should apply to the whole of England and Wales, but London had had in the past, and he did not doubt would continue to have in the future, special legislation applying to many branches of public activity ; and so long as the State recognised that local authorities might be entitled to legislation to suit their particular needs, or, if he might say so, that some local authorities happened

to be more enterprising than others and should be given encouragement, he saw no reason why in the particular case in question the State should not give its encouragement to London also. That, however, did not affect the merits of the proposal ; it was merely a question of whether the legislation should be general or not.

Sir George Courthope said that where such legislation had been applied in the United States of America and the Dominions it had led in certain cases to the pulling down of buildings. He thought it should be pointed out that where such legislation applied it was legislation which involved the rating of the capital value of property, and it involved also the rating of the land even if the building was pulled down ; and the reason why the building was pulled down was a simple one, namely, that it had become worn out and that it was no longer capable of earning a rent which was proportionate to the value of the site on which it stood. The owner, therefore, as an economic measure, decided to pull the building down. That, however, was not a serious problem in London so far as the present proposals were concerned, and there was no need to worry about it. The rating of empty properties in Scotland had been in force for a very long period, and he was quite unaware that any of those difficulties and disasters had happened in that country ; on the contrary, the system had worked easily and well. It was true that it operated there because roughly half the rates were levied on the owner of the property in any case and the remainder on the occupier.

He had refreshed his memory by going back to the Report of the Royal Commission, which was a great source of information on all questions of rating. He discovered that not only did the Royal Commission recommend that unoccupied property should make some contribution to the rates, for the reasons which had been outlined that evening, but that the eminent economists who were asked to give written arguments and answers to the Royal Commission upon a series of questions dealing with the principles of local taxation were asked, among other things, whether they thought that rates should be divided between owners and occupiers, and out of sixteen there were only two who answered that question in the negative. In other words, they favoured the kind of system which now existed in Scotland, and which carried with it automatically that the owner of property made some contribution to the rates irrespective of whether the property was occupied or not.

There was one other objection to which he would briefly refer. It was said that the proposal conflicted with the so-called principle of ability to pay ; in other words, that people should be rated only in respect of property from which they were deriving an income. That was not an invariable procedure with regard to taxation. It did not apply to certain branches of national taxation ; the legisla-

ture had from time to time required taxes to be paid in respect of property which was not earning an income. In the case of local rating, moreover, the method of taxation was one which in any case had no relationship whatever to ability to pay. The ability to pay of any ratepayer was not necessarily measured by the value of the property which he occupied ; in very many cases, as everyone must be aware, the value of the property which the ratepayer occupied was rather a measure of his inability than of his ability to pay. One felt all the more justified in saying, therefore, that the proposal did not conflict with any fundamental principle, but that on the contrary it implemented a principle which had been recognised by the legislature in many directions, namely, that those who benefited by public expenditure ought to make some contribution towards that public expenditure.

The unoccupied property which would be affected was capable of being let, as was shown by the fact that it was entered on the valuation list, and had a rateable value which was dependent on the estimate which had been made of what it would bring in if it were let, a valuation against which the owner had had an opportunity to appeal. It was therefore perfectly clear that such property had a value, and a value which was maintained by the public services. It was only a modest proposal that the owner should make a contribution to the extent of one-quarter that made by other ratepayers towards the maintenance of those public services from which he benefited so greatly.

Mr. R. C. Dewar Jenkins, L.C.C., who spoke in opposition, said that he felt very gratified at being allowed to take part in the discussion, because he was addressing one of the most important professional institutions in the country and at the same time had the opportunity of opposing two of his friends, though in the opposite camp, on the London County Council without that tinge of political atmosphere which prevailed in the Council. An opportunity was afforded that evening of discussing the case purely on its merits, and there was no necessity to deliver propaganda speeches for the benefit of the ratepayers outside.

There were actually three reasons why the proposal under discussion had been brought forward. One of them had been given that evening as the principal reason ; Mr. Latham had said that the reason for the proposal was that owners of empty property should contribute to the services provided for them. There were, in fact, however, three reasons, and they had come out at various times and in various places. The first was the endeavour to secure lower rents. That was a punitive reason. Then there was, as Mr. Latham had said, the question of the

equal distribution of cost, which was an attempt to achieve equity as between the owners of occupied and unoccupied hereditaments. Thirdly, there was the desire on the part of the London County Council to secure additional income and revenue. Those were the three main reasons for the proposal.

Taking the first reason, the punitive one, it was of interest to see how it worked out. If the rating of empty properties went through Parliament and became operative, of necessity owners of property would be very anxious quickly to let their property. There would be a rush on their part to lease their property, and, as a result, in many cases the income from that property would be lower than the market value round about. That meant that a man who happened to own some property which for some reason or other was unlet would be punished and fined because he was the owner of that property. He would like, though with no desire to stress the sentimental side of it, to take the extreme case of a man whose life savings had been invested in a property which brought him in £150 a year. The property became vacant, and, although normally it would let for £150, he could not obtain that figure because of the need for letting it quickly, since he would be fined if he did not do so. He therefore let it for £120, and lost £30 a year. In a case of that kind it was most unfortunate that such a man would lose £30 a year simply because he would lose more by not letting the property and because he would not have the money to pay the empty rate when it became due.

Two of the most important problems which faced this country were housing and unemployment. Everyone knew how sensitive the property market was, and if rents were going to become lower and if property owners had to let their properties at lower rents, there would automatically be a slowing-up of the housing programmes. Whatever might take place in other spheres of housing, there was bound to be a slowing-up of the housing programme of private enterprise. To-day the private speculative builder was putting up houses with the object of selling or letting them, but if the proposal under discussion were adopted such a man would obviously be less willing to put his money into property. The natural result would be that fewer houses would be built, and in the course of time, instead of there being sufficient houses for the people of this country there would be fewer, and as a result unemployment would increase and every part of the community would be directly or indirectly affected. The ultimate effect of rating empty properties would therefore be an increase in rents ; not at present, nor perhaps for twenty years, but eventually. In the meantime, however, rents would be lowered. Because of that there would be less building, and as a result of less building there would eventually be a shortage of houses again, just as a short-

age was caused by a certain Act, which everyone knew and which he need not name, which was passed before the War.

The second thing which the promoters of the Bill desired to see was an equal distribution of the cost of the services provided. Mr. Latham, in the *Times,* said that the local services were of great use to the owners of property and had the effect generally of securing them against a drop in the value of property which would occur if such services were not rendered. One of Mr. Latham's arguments substantiating that contention was that fire insurance premiums were paid whether a building was occupied or whether it was not—a very fair comment. The payment of insurance was, of course, at the volition of the owner and not compulsory, and, of course, if the building were burned out, all the owner's income was lost, whereas the payment of rates was enforceable. It should be pointed out, moreover, that statutory undertakings such as the Metropolitan Water Board and the gas and electricity companies did not make any charge to an unoccupied hereditament, though their services were available to the incoming tenant in precisely the same way as those of the local authority. It was difficult to see, therefore, why the London County Council should rate the people of London on unoccupied properties when the great statutory undertakings made no charge in similar circumstances.

It was of interest to examine what were the services which were said to be of benefit to the owners of empty property. It had been said that evening that they were the police, the fire brigade, public lighting, street maintenance and drainage, and Mr. Latham said that they represented 27 per cent.—for convenience it might be put at 25 per cent.—of the total rates levied. It was on that basis that the figure of 25 per cent. was suggested for the rating of unoccupied property. It could hardly be contended, however, that the service which the police gave to unoccupied property was the same as that which they gave to occupied property. It was ludicrous to suggest that a house which was full of valuables and money was looked after by the police in precisely the same way as empty property ; and since the police rate was 11 per cent. of the total, he suggested that a proportion of 1 per cent. would be nearer the mark. So far as the fire brigade was concerned, it was an acknowledged fact—and if any fire assessors were present that evening they would be able to substantiate it—that only an infinitesimal number of the properties burned out during any year were empty properties. That concerned 3·25 per cent. of the total rate. It was hardly necessary to comment on public lighting. It was essential to have public lighting in a street for the benefit of those using the street, but if a property was unoccupied no one would be going to it after dark, and therefore it did not need the lighting. The same arguments applied in the case of street main-

tenance and main drainage. In regard to main drainage, indeed, it could be suggested—though he did not seriously put it forward—that the London County Council ought to pay money to the owner of the unoccupied property, because the only service the drainage did was to take away the rain water which flushed the drains.

If 25 per cent. was the proportion which the occupiers of property paid for those services, it might be suggested quite frankly that there was a case in equity and justice for charging the owners of unoccupied property something ; but he suggested in equity and justice that that something would be so small as not to be worth collecting. He thought 5 per cent. would be too large an amount, although it would be nearer the mark than 25 per cent. ; but, assuming that 5 per cent. was collected, when one considered the cost of collection and supervision and the enormous number of exemptions which had been referred to, he was afraid that 5 per cent. would probably come down to 2 or even 1 per cent. It might be asked, therefore, whether the trouble was worth while. Mr. Chamberlain said in 1925 that the proposal meant a fundamental alteration in the law of rating, and one might well ask whether it was worth while to scrap something which had been in operation for so many years when the results obviously would not be worth it.

The third reason for the proposal was that it was going to be a source of additional revenue. Mr. Latham had not said much about that, but it was to be hoped that he would comment on it at a later stage. It might be that if full effect was given to the proposal it would bring in £800,000 to the coffers of the London boroughs, but the London County Council would not gain a half-penny by the passage of the Bill. It was necessary, however, to look at the real financial results.

In the first place, property was going to be let below its real rental value for many years to come. That would cause a decrease in the assessments in the neighbourhood. No one knew better than the President that when an appeal was made before an assessment authority, if one case should be shown of an hereditament on all fours with others, but with a lower assessment than those others, there was a very good chance of getting all the houses of that size and kind down in that area. That was an acknowledged fact. At any rate he was certain the members of the Chartered Surveyors' Institution who were representing clients in such circumstances would pay great regard to the fact if they found a house which was on all fours with the house with which they were concerned but which had a lower assessment. He maintained, therefore, that assessments would come down, and that the last state would be worse than the first.

There were one or two other financial results to which he would like briefly to refer. It was probably well known to surveyors that

London's assessment value at the recent quinquennial valuation was likely to be lower than at the previous one, and if the proposed imposition were to be made at such a time, when the rents and assessment values were being thrust further down, instead of an increase in the amount available for social and other services, there would be a decrease.

Finally, a depreciation in rents meant a depreciation in capital values; and a depreciation in capital values, as Sir George Courthope had said, would create a state of disorganisation in regard to mortgages. The amount of trouble and upheaval so caused would not be justified by the results attained. Again, if the capital value were depreciated, the death duties would be less, and there would be a fall in income tax on account of the lower rents. The question which had to be determined was whether it was worth while disturbing an old practice for the sake of securing a problematical increase in rate revenue and a decrease in national revenue, when at the same time the property market was bound to be disorganised and the interests of the buyers and sellers of property and of the tenants would be imperilled. It was for those reasons that he opposed the proposal.

Mr. C. Harman Hunt (Fellow) said he regarded it as a very great privilege to be the first Chartered Surveyor to speak in the discussion, and he would try to look at the proposed Bill impartially and from the legal point of view. He thought it would be agreed that the machinery of the 1925 Act, which governed rating throughout the whole of England exclusive of the metropolis, must, and in a very short time, be applied to London. He did not think he was giving away any secret when he said that there were many who hoped that that machinery would be in operation immediately following this quinquennium. Such hopes had, however, been somewhat dashed, and it did not appear that Parliament would find time to deal with what was a very important matter; but if those hopes proved to be well founded, and there was a possibility of the Act of 1925 being applied to London, it might be asked whether it was worth while, quite apart from any other considerations, embarking on a piece of legislation for London only when the whole matter might well be reviewed in the near future, when the question of applying the 1925 Act to London came up.

Mr. Jenkins had dealt with one point to which he himself had intended to refer, namely, the equity of the proportion of 25 per cent. It was unnecessary to repeat the reasons given by Mr. Jenkins, but personally his calculations differed somewhat from those which Mr. Jenkins had made. He thought there was something in the proposal from the point of view of equity, and he

would halve the 25 per cent., making it 12½ per cent. as opposed to the 5 per cent. mentioned by Mr. Jenkins. He calculated that 12½ per cent. on the "empties" would produce an income, without allowances, in the neighbourhood of £180,000 a year. What it would be when the allowances had been made he did not know, but he wondered whether it was worth while bringing the measure before Parliament when the sum concerned was comparatively so small.

He felt it would be a serious and dangerous step to give effect to the proposal without amending the Act governing the metropolis so as to give occupiers the right to object at any time. In his view the reason that many properties in the West End and the City were vacant to-day, and had in some cases been vacant for a considerable time, was mainly that their rateable values were too high, being based on boom rents at the last quinquennial valuation. The landlords were unable to let them because of the enormous burden which the tenants would have to shoulder, with the knowledge that they could have no redress until the next quinquennium. It might well be said that those over-assessments were due to the landlords having omitted to exercise their right to object, under the 1896 Act, at the quinquennial, even though the tenants had failed to do so; nevertheless those high assessments existed, and until the machinery was altered so that objection could be taken at any time that state of affairs would continue.

His own view was that the proposed measure it put into effect would not affect rents so far as properties owned by big landlords were concerned. The imposition of a tax, even of 25 per cent., would not affect the time that a property owned by a big landlord was on the market. It would, however, seriously affect the small owner, who would be forced to take the first tenant who came along. Personally he was not so much concerned with the question of whether such an owner took a smaller rent or not, but he was concerned with the class of tenant who was found. Particularly in the case of special properties in the West End and the City the number of suitable tenants was limited, and if the owner was unable to wait for a suitable tenant, he might be forced into the position of letting the premises for purposes other than those for which they were designed. From that point of view he thought that the measure would have a detrimental effect on property and would be extremely bad.

From the mortgage point of view he did not think that a rate of even 25 per cent. would seriously affect capital values, but he did think that it would influence the minds of trustees. Trustees would say "Not only have we to face the possibility of having "no one to pay our interest, but in addition to not being able to

"let the property we may have to put our hands into our pockets "to contribute to the general rates."

Major ALFRED C. SAVILL (Fellow) said he would be grateful if Mr. Latham, in replying to the discussion, would deal with one or two points of principle in connection with the proposed Bill. Mr. Latham had suggested that really the only object of the Bill was to ensure that the owners of unoccupied properties should make an equitable contribution towards the cost of what might perhaps be described as municipal services. Would Mr. Latham agree that a man with no income should pay income tax in order to make his contribution towards the cost of the upkeep of the Army and Navy? That seemed to be a parallel principle. The London County Council were aiming at an equal distribution of the burden. Would Mr. Latham agree that a jeweller, who had valuable stock to be protected, should pay a higher rate than a chemist, whose stock nobody wanted to steal. Again, taking the question of drainage, would Mr. Latham agree that the owner of a block of offices in the City of London, containing, perhaps, two wash-basins and one w.c., should pay a lower rate than the owner of a block of flats where each flat had a bathroom, wash-basins, etc.?

There was one other point of considerable importance to which Mr. Harman Hunt referred and with which he would ask Mr. Latham to deal, namely, the question of trustees. If a property in the hands of trustees became empty, would special provision be made in the Act giving redress to the trustees, or would they have to put their hands in their own pockets to find the rates payable?

Mr. J. G. ELSWORTHY (Fellow) said he opposed the proposal because he thought it would prove to be a boomerang and would come back on the heads of its promoters. It had been computed, he understood, that a decrease of 1 per cent. in the amount of the net rateable value in London would entirely obliterate any advantage that was obtained from the collection of 25 per cent. of the normal rate on empty properties, and it had been admitted that the tendency of the proposal would be to depress rents, and therefore obviously rateable assessments also.

Moreover, it was a fact that a very great municipality in one of the overseas Dominions a short time ago found its finances in a very bad state indeed, so much so that great embarrassment was caused to that municipality and to the State in which it was situated, and it was a fact also that a great deal of that embarrassment was due to the inability of the municipality to collect rates on unoccupied properties and also on land which was vacant but which had been rated.

That brought one back to the consideration that the proposal under discussion was really going to be a tax on capital. He could

not see where the 25 per cent. was going to come from except out of capital. That would immediately involve the question of the Trustee Act. He did not know whether trustees were going to be given additional powers to take capital moneys to pay that annual charge, but he thought that that was unlikely.

It would also, to his mind, have a very bad effect on building societies, which constituted a large factor in the country's development at the present time. It was known that building societies had a certain number of empty and vacant properties on their hands, and if they had to pay a 25 per cent. rate on those vacant properties, they would sooner or later have to pass that on to what were known as their good borrowers, and their good borrowers would therefore have to pay additional interest. As a matter of fact, the State had recently exacted from the building societies a much-increased contribution in the shape of income tax, and if, in addition to that extra income tax, building societies had also to pay that additional rate, it meant that a class of the community whom everyone was anxious to help—the small owner-occupier—was going to be penalised.

If the principle of a 25 per cent. rate was admitted, would there be any guarantee that it would stop at that? Was there any guarantee that sooner or later that 25 per cent. would not become 30 per cent., 50 per cent., and so on? In short, he thought the proposal represented a tax on capital in a disguised form, and he believed its effects would be detrimental to the community as a whole.

There was one practical contribution to the discussion which he would like to make. If the proposed measure came into force, he thought surveyors should collaborate with their friends who were engaged in insurance and treat it as a disaster comparable to a fire or a burglary, and get those concerned with insurance to quote a rate whereby all the property, whether let, empty or otherwise, contributed, and take out a policy so that the payment of the 25 per cent. would be made by the wealthy insurance interests and not by the poor harassed owner.

Mr. Isaac Dixon (Fellow) said he was sure that all the members of the Institution present were most grateful to Mr. Latham and to Mr. Douglas for giving their views on a most important and extremely interesting measure. Personally—and he thought most of the members present could say the same—he came to the meeting with an absolutely unbiased mind. He knew something about the subject, but he was quite unbiased. With the utmost respect to Mr. Latham, however, one or two things that Mr. Latham had said in support of the Bill had made him rather frightened of it.

Mr. Latham had said that "where property is unreasonably

"withheld" there should be some contribution from the owner. He wondered whether that presupposed, in the opinion of the promoters of the Bill, that empty properties were unreasonably withheld. Probably all surveyors knew of cases of landlords here and there who did unreasonably withhold their properties from sale or letting, but in his own experience, and he thought in the experience of most member of the Institution who were capable of judging, in the vast majority of cases landlords would be only too glad to let their properties. There was no question of withholding them ; there was no reason why a landlord should deprive himself of a reasonable rent year after year. In the great majority of cases empty properties were not let because tenants could not be found.

He noticed that in the explanatory statement relating to the Bill there were the words " In order to meet hardship in particular " cases," and then it went on to refer to certain provisions of the Bill granting exemptions from the empty rate in certain circumstances. He would like to ask why hardship should be met only in particular cases and not wherever it occurred? Why particularise? Why select? Houses were not to benefit, and therefore, although the landlord might be doing his utmost to let a house by notice boards, advertisements in the press, and so on, that was not to be regarded as a case of hardship or as one of the particular cases which the Bill proposed to exempt.

In the case of industrial hereditaments, it was said that it was the owner of the hereditament who would pay and not the occupier. Speaking in respect of industrial hereditaments throughout the country, he thought surveyors would know quite well that in the vast majority of cases of industrial hereditaments which counted at all it was the owners who occupied, and in a vast number of cases of empty industrial hereditaments they were empty because the particular industry in which they were engaged was suffering from depression, or because there had been some change in trade which required a different fashion. Were the owners to be penalised? When, as occupiers, they had gone bankrupt and had had to be wound up and gone into liquidation, were they, as owners, to have to meet a demand for rates on the empty property equal in amount to their former occupier's rate? It seemed to him that the Bill had not been well thought out.

With regard to the principle, Mr. Latham said that by reason of empty properties escaping, an excessive burden fell on occupiers. Personally he did not think the case was proved. It had been said that in respect of the whole of the County of London the difference which would be made to the rate if the whole of the empty properties were rated at the full amount at which they now stood in the valuation lists would be 6·18*d.* in the £. If,

however, the figures were taken out for Westminster and some of the other West End areas, they would make a very poor showing for the remainder. According to the same document (*i.e.*, the explanatory statement) in Woolwich it would make a difference of 1·86*d.* and in Battersea of 2·09*d.* Averaging those two, one might call it 2*d.* in the £, and take that as representative of the ordinary parts of London. If the yield would be 2*d.* on the full rate, the London County Council's proposal for an empty rate of 25 per cent. would reduce the burden by ½*d.* in the £. Both Mr. Jenkins and Mr. Hunt had maintained, however, that the proposal of 25 per cent. was excessive. After hearing what they had said, he was of opinion that it was greatly excessive, but even 25 per cent. meant only ½*d.* in the £ to Woolwich and Battersea, less exemption allowances and less costs of administration.

When considering the effect of the proposal, it was necessary to think not only of the effect on the community as a whole, but also of the effect on the individual landlord. If the Bill was a good one, he did not see why London should be the only part of the country to benefit from it. If its principle was sound, it should apply throughout the country ; if it was a bad one, he did not see why even London should be burdened with it. Whatever might be the difficulties of landlords in the south (he did not mean in London alone), where there was comparative prosperity in regard to the rating of empty buildings, they were small in relation to the difficulties of landlords in other parts of the country. Tyneside, parts of Lancashire, South Wales and other districts had in some cases a poundage of nearly 20*s.* in the £, and if landlords of properties which were empty through no fault of their own were to be burdened with a rate, even though their property was empty, he thought it would be a very grave injustice.

He agreed with Sir George Courthope that if there was a logical case for the proposal, if an entirely new system of rating was to be set up, it was necessary to be satisfied in the first place that the effect of it would be worth while for the community as a whole, and secondly, that even if that were so, it would not be unduly harsh on individuals who were already so unfortunate as to be landlords of property which they could not let.

The PRESIDENT asked whether any member practising in Scotland would care to contribute to the discussion.

Mr. J. C. PINKERTON (Fellow) (City Assessor, Glasgow), said that he came from the Scottish Branch, not the Irish Branch, and therefore whether the present fight was a public or a private one he was not itching to take part in it. He had been very interested in the discussion because empty property in Scotland had been

subject to rating for a very long time. It was true that, so far as the city of Glasgow was concerned, municipal rates had not been imposed on empty property prior to 1908. There was no new legislation at that time. Although the poor rate and the education rate had been levied on the owners of empty property, the municipal rate had not been levied, but should have been.

He had been particularly interested in what had been said as to the anticipated effect of rates on empty property and on property in general. He did not wish to express an opinion as to whether it would be a good thing if the proposed Bill applied only in respect of London, or if similar provisions should be applied to the whole of England ; that was not a matter on which he felt he had a right to say anything. He was sorry to spoil a good story—a story he had heard more than once since entering the Institution that evening—but he would like the audience to realise that Scotland was not covered with derelict buildings from which the roofs had been removed to escape rating. He could not speak for the whole of Scotland, but he could speak for the largest rating area in Scotland, the city of Glasgow, and he did not know of any property of any substantial value in Glasgow where the owner had resorted to taking the roof off to escape rating. He said that not only to correct any impression the members might have of Scotland, but to stand up for the Scottish national character ; he could not conceive of a Scotsman deliberately destroying the capital value of his premises even to escape rates. He must apologise to Sir George Courthope for spoiling his story.

He could add a good deal on the technical aspects of the question, but he did not feel that a technical discussion of the matter was called for from him at the present meeting.

Sir Allan Powell, c.b.e. (Visitor) said that his main reason for rising to speak was that the discussion seemed to be becoming rather one-sided, apart from Mr. Pinkerton, who, judging from his experience in Scotland, was probably a supporter of the general principle contained in the Bill. Personally his qualification for saying anything on the subject, as a layman, was that he was a member of an assessment committee of one of the wealthy boroughs which had been referred to in the West End of London. The great majority of his colleagues had no such fears as had been adumbrated by the various speakers who had opposed the proposals contained in the Bill.

Mr. Jenkins had spoken with great enthusiasm and had evidently swayed many people, but many of the things he said could be discounted. It did not seem very intelligent, for example, for the man whose life savings were all in a house which ought to

bring in £150 a year to let it for £30 less than that sum to avoid the payment of about £15 in rates.

Mr. Ryde, writing to the *Times*, went further, and asked what was to be done with the man who could not find purchaser or tenant at any price whatever possibly for years? Such a man was in a bad way before the local authority levied a rate on him. It was not desirable to regulate rating in this country by such extreme cases.

Mr. Ryde gave in the *Times* some reasons for opposing the Bill. He attached emphasis to present rating principles dating back to Queen Elizabeth. Personally he was not prepared to regulate the world to-day by everything Queen Elizabeth once said or did. He had been impressed by the argument cited by the L.C.C., which such a great authority as Mr. Ryde had put forward in Court ; but Mr. Ryde had not adhered to this, but had pointed out that the considered statement in his text-book must prevail.

Personally, unlike Mr. Dixon, who said he had come to the meeting quite unbiased, and who had made an excellent speech from his point of view, he himself was not unbiased. As far as it was possible for him he had studied the arguments which had been used since 1925, and he felt that, on consideration of everything that had happened, on consideration of the facts that a Royal Commission which was above party recommended the proposal, that both parties on the London County Council had supported it at different times, and that many of the metropolitan boroughs had done so, the Bill should be supported. He had never heard an adequate argument against the principle on which the proposal was based. It had not been denied that empty properties did benefit by certain services provided by the public, and it was hardly denied that they should pay at any rate something towards the cost of those services.

The objectors said, on the one hand, that the owners of empty properties would have to pay so much that they and the value of property generally would be most adversely affected, and, on the other hand, that the amount collected would be so small that it would not be worth getting. Both could not be right. There were, however, services which were rendered out of public funds and which, it was admitted, ought to be paid for. Sir George Courthope said that if a fresh start was being made altogether there would be an arguable case for the proposal. The system was already in operation in other parts of the world and in other parts of the British Isles, and had not led to the difficulties which were feared. The analogies sought to be drawn with the Water Board and similar bodies and with the income tax did not appear to him to be relevant. The question was one of abstract justice, of

principle, and the objections to it had for the most part turned on points of detail which were capable of adjustment.

Mr. H. F. Bidder (Associate) said he felt impelled to protest against the attitude adopted by Sir Allan Powell towards that very eminent authority on rating, Mr. Ryde. The letters which Mr. Ryde wrote to the *Times* were of extraordinary interest, and Mr. Ryde was able to show that the quotation from his book had been misunderstood. With regard to Mr. Ryde's very frank and natural admission, when it was put to him, that in arguing for a client in a particular case he had done his best to put all the legal arguments on the side of his client, that had been his duty ; he was not acting then in a judicial capacity or as a man putting forward ultimate principles in a book, but was acting for a client and trying to put forward everything which would support the view that the client desired to present. It was utterly wrong to bring that forward as though it indicated inconsistency or indicated that he was not fitted to give a judicial summing-up of the question such as a text-book required.

On the general question, the proposal contained in the Bill was undoubtedly a reversal of the whole principle of rating as carried out in England for three hundred years.

The question was whether Parliament was to be pressed in regard to London to reverse the whole principle of local rating. Queen Elizabeth, of course, had nothing to do with it at all, but an Act passed in the last year of her reign started the principle of rating which had been carried out and upheld in this country for the last three hundred years. That principle was that a rate was not a tax on property but a tax on the occupier, and it was a tax on him in respect of his occupation as being a fair division of the common charges which the community had to meet. To-day for the first time it was proposed that that principle should be thrown to the winds, and that the rate should be a tax on property, a tax on the owner of property in respect of the property and not in respect of the occupation. Good or bad, that was a complete reversal of English practice up to the present, and that should be recognised and regarded very seriously in considering whether there was anything in the situation which demanded such a reversal of policy.

The President then called upon Mr. G. W. Currie, who was chairman of the inquiry into working-class housing in Scotland after the War, and a member of the London County Council.

Mr. G. W. Currie (Visitor) said the President had asked for

an expression of opinion from those familiar with conditions in Scotland, and that was one of the reasons why he wished to speak. He had spent no small portion of a long business life in dealing with property, not only in Scotland but in the Dominions, and was familiar with the conditions of assessment in places such as Winnipeg and Vancouver, and his experience, for what it was worth, was that arguements against the proposals of the London County Council based on such colonial experience were really of no value at all. No one with any familiarity with conditions in Scotland, moreover, would argue that the results of the practice so long accepted there without anything that could be called a general protest were unfavourable to its continuance. He agreed, of course, that one could not rely unduly on the argument from Scotland and seek to apply it too strictly to London.

From the point of view of those who were interested in the investment of money, he could not conceive—he would put it as strongly as that—that any serious effect on their fortunes would result if the County Council's proposal became law. The effect might be, he thought, to tend to make trustees invest money slightly more carefully than they did at present ; but that would do them no harm and would do no one else any harm either.

There had been one gap in their discussion so far ; it was surprising that no one had laid any stress on the fact that the majority of the London boroughs had asked the London County Council to put forward the proposal. If the proposal were so inherently unjust and so ridiculous as had been suggested, the experienced practical men who advised the boroughs in such matters would not have supported it at all. If he were asked to assent to a proposal that each borough might logically be given a free hand to decide whether it would apply the principle in question or not he did not know that he would quarrel with that, but that was by the way. If the proposal contained in the Bill were a foolish one, it would not have commanded the support of at least three-quarters of the metropolitan boroughs.

Sometimes an ounce of practice was worth a good deal of theory, and he would therefore like to refer very briefly to an experience he had had about eighteen months ago, when he happened to be looking for a range of office accommodation which he knew, in Westminster, would probably cost well over £1,000. He saw some property of the kind he wanted, and was asked a rent of £1,800. He at once told the manager of the property, who was showing him round, " You must know as well as I do that " you cannot possibly expect to get a rent of £1,800." His answer was that he knew that quite well, but that what he was considering was the value of his other adjoining properties. He was unwilling to scale down the rent of the place which was

standing vacant ; and he added that in the meantime he paid no rates upon it. He (Mr. Currie) could not give the subsequent history of the place, but he believed it was afterwards let for £1,100 or £1,200, a sum which he would have been willing to pay. Such an incident proved up to the hilt that account must be taken of the policy practised by some people of holding property off the market.

The suggestion had been made that the London County Council was seeking additional revenue. That was not the case, and it was not even the case that the boroughs were seeking it. They did seek to distribute the burden more fairly than at present ; that was the real point—that property should pay for its keep—and, if attention were confined to that, he thought it would be hard to argue that there was anything inherently unfair or unreasonable in the action of the London County Council in adopting the policy pressed on it by the majority of the London boroughs, with which it was its duty, and as a rule its pleasure, to co-operate.

As one who had no short experience of dealing in property of various kinds, he thought that the fears expressed by his old friend Mr. Bidder were exaggerated. Without discussing opinions given in or out of court by Mr. Ryde, who was a recognised legal authority whom nobody at County Hall would wish to misrepresent, they did not move him from his opinion that the proposal under consideration was both moderate and fair.

Mr. Charles Latham, in reply, said the small number of those who had supported the proposal was in no way unexpected, and he had been very pleased to listen to the objections raised. He was indebted to Mr. Pinkerton for so ably dispelling the lurid misgivings which Sir George Courthope raised of seeing the whole of Westminster roofless, and his friend Mr. Douglas had dealt with the situation so far as what was alleged to happen in certain parts of America where the proposal was already in operation was concerned.

He was sure that Sir George Courthope could not have read carefully the proposals set out in the Bill with respect to recourse against the occupier. Sir George led the meeting to believe that the Council would have an unlimited right of distress against the occupier. No such proposal was intended, and no such provision was in the Bill. The right of recovery against the occupier was limited to the amount of rent due from the occupier to the owner, which was entirely different from having an unlimited right of distress against the occupier. It was proposed to say to the occupier, as was done in the case of Schedule A, " Instead of " paying your rent to the landlord, please pay it to the rating

"authority." That should dispel Sir George's fears of any ruthless action against occupiers when the owner had not paid the empty rate.

Mr. Jenkins, in his dispassionate (*sic*) consideration of the proposals, and in his clever avoidance of politics—whilst being political—did his best to make people's flesh creep both as to the effects of the proposals and as to why they had been proposed. Mr. Jenkins could not have consulted the records of the L.C.C. with regard to the proposals now made. At the end Mr. Jenkins said "In any case, is it worth while?" Mr. Jenkins could not have each of his three objections all at the same time. He (Mr. Jenkins) suggested that the proposal was intended to be punitive, but there was nothing in the history of the proposal so far as the London County Council was concerned which supported that view in any way whatever. The proposal was approved by former Councils dating back to 1898, and there was nothing in the proposals made by former Councils or in the present Bill to support the suggestion that the proposal was intended to be punitive or was deliberately seeking to lower rents. After all, the real trouble with the man to whom Mr. Jenkins referred, who had invested his life savings in a house, was not that he would have to pay a 25 per cent. rate when the property was empty but that if he could not let the property, presumably since all his savings were invested in it, he would have no income at all. That was the real tragedy for him.

In connection with the alleged punitive factor, perhaps here he might also deal with a remark made by Mr. Dixon, whose contribution to the discussion he very much appreciated. Mr. Dixon seemed to have understood him to say that it was desired primarily to prevent properties being unreasonably withheld from letting because of abnormal rents. He hoped he had not conveyed that impression ; what he did say was that it might well be that one of the results of the proposal would be that *if* properties had been unreasonably withheld for abnormal rents the proposed rating of empties might lower such rents. There was no intention behind the proposal to do anything with respect to rents as a general matter.

Mr. Jenkins admitted—one might say with great reluctance—the equity of the proposal, but maintained that the third reason for it was the desire to secure increased revenue. As Mr. Currie had pointed out, no increased revenue would flow to the London County Council until the present law of rating in London was altered, and even so there was nothing to lead one reasonably to suppose that the proposal had its origin in any desire to increase revenue. Its origin was the desire to spread equitably the burden of providing certain services.

Mr. Jenkins' point about water, gas and electricity was a fallacious one. After all, the water, gas and electricity undertakings could shut off the supply to an empty property, but it was not possible to pull up the road in front of the empty property or to take down the street lamps or to say to the policeman on his beat "You need not have any regard to that property; it is "empty." It was not possible to interrupt the main drainage system or the local drainage system because a property was empty. The water, gas and electricity undertakings, although they might be statutory, were in fact supplying commodities, whereas the local authority was supplying services.

Mr. Jenkins' argument with regard to the police would seem to be based on a view held by him that police protection should be paid for on the basis of the contents of the dwelling, and Mr. Savill asked whether a chemist should pay less for police protection than a jeweller. The answer was that it was not possible to regulate the assessment of the jeweller or the chemist to the police rate or to the fire brigade rate by reference to the value of the contents of their premises.

He would like to correct a mistake made by Mr. Jenkins, who suggested that the benefit to London from the operation of the proposal would be £800,000. According to the figures for 1934-35, and disregarding the exemptions, the measure of which it was impossible to estimate at the moment, a 25 per cent. rate would produce not £800,000 but about £300,000, excluding the city of London.

Mr. Savill seemed to be concerned about rates being demanded where no income flowed, and went on to ask whether it was desirable that people should pay income tax when they had no income. Personally he did not admit the comparability of a tax with a rate; he thought that the origin was different, the service was different and the incidence must essentially be different. It was the fact, however, that in the depressed areas, to which Mr. Dixon referred so eloquently, and elsewhere many companies and firms were paying Schedule A at the end of a year during which they had had no income from the occupancy of the premises on which Schedule A was paid, and it was also a fact that many ratepayers, more especially in the depressed areas, paid rates although at the end of the year they had no income from the occupancy of their premises, and probably or possibly had a loss.

Mr. Savill also asked whether trustees were to be dealt with on any special footing. There were no provisions in the Bill for dealing with trustees on any special footing or for granting them any special exemptions. It did not seem to him that there was any case for the special treatment of trustees so far as the proposal in question was concerned.

Mr. Elsworthy suggested that the proposal was a tax on capital. That had been alleged against every development, whether of rates or of taxation. Whenever a new tax or a new rate had been introduced, the end of all things was prophesied. It might well be that in its working out the rate on empty property might prove to be in some minor and special respect a tax on capital, but that did not go, in his submission, to the merit or equity of the proposal.

He was interested—as one not unconnected with dealing with companies or firms which had to go into liquidation, became bankrupt and were wound up—in what Mr. Dixon had said as to their then paying rates on their empty factories. As of course Mr. Dixon well knew, if a company went into liquidation or if a man was made bankrupt, or if a firm was wound up, the property was disposed of, and presumably somebody bought it sooner or later. Whoever bought it would buy it with notice that he had to pay an empty rate.

There was one final point which he desired to make, and he was sure that Mr. Bidder would understand his making it. It was with regard to the letter in the *Times* which appeared over his name, which dealt with certain submissions of Mr. Ryde and quoted certain paragraphs from his books. That was not intended to be, nor in his opinion could it fairly be considered to be, any distortion of what Mr. Ryde said in his books or his pleadings in court. He was sure that Mr. Bidder and all those present would acquit any responsible member of the London County Council who wrote to the *Times* of deliberately desiring to distort either the statements or the writings of Mr. Ryde on rating, or, indeed, of any other person.

The PRESIDENT said the Institution owed a deep debt of thanks to the gentlemen who had spoken on the very interesting subject which had been discussed. All the members would desire to thank Mr. Latham for the trouble he had taken and for the admirable way in which he had put his case, in a manner free from bias. They were equally grateful to Mr. Douglas, who had so ably seconded Mr. Latham's efforts. The members were always glad to hear Sir George Courthope, and were very much obliged to him for his study of the subject and for what he had said; they would desire to offer him, as they had so often had occasion to do in the past, their very best thanks. They were also much obliged to Mr. Jenkins for his breezy speech on a subject which he had evidently very much at heart. They were also indebted to Mr. Harman Hunt (the representative of the Junior Organisation) and to Mr. Bidder, Mr. Currie and others who

had added to their knowledge by discussing both sides of a very thorny question.

He begged to propose a cordial vote of thanks to all those who had taken part in the discussion.

The vote of thanks was carried with acclamation, and the proceedings then terminated.

Paper No. 566.

THE LAW OF PARTY-WALLS OUTSIDE LONDON.

By W. T. Creswell, K.C. (Hon. A.R.I.B.A.) (Associate).

Paper to be read at the Ordinary General Meeting of the Chartered Surveyors' Institution on Monday, 10th February, 1936.

In accordance with the instructions of the Council this paper is concerned with the consideration of the law of party-walls outside the administrative county of London.

Except in London and in a few other places, each of restricted area, where building operations are governed by by-laws made under the powers given by some local Acts of Parliament, the rights and liabilities of adjoining owners in respect to party-walls are based on the common law as modified by the Law of Property Act, 1925. However, many of the decisions both in respect to common law and in respect to statute law anent party-walls have been given in cases which have been brought before the Courts under the London Building Act. This Act contains divers provisions and definitions as to party-walls, and it is not unusual for similar provisions and definitions to be expressly embodied in voluntary agreements made between adjoining owners in respect to party-walls which are *outside* the London area.

We see, then, that the common law rights in respect to party-walls are not applied in London. In *Lewis* v. *Charing Cross, Euston and Hampstead Railway Co.* (1906), 1 Ch. 508, it was clearly enunciated, by Warrington, J., that whatever the rights of adjoining owners are at common law, any structure within the district comprehended by the London Building Act of 1894 now depended on that Act, and that adjoining owners in the London district have only the rights given by the Act.

Two other important decisions in London cases may be given:—

In *Barry* v. *Mintern* (1913), A.C. 584, it was held that the tribunal adjudicating under the London Building Act, 1894, upon a dispute which had arisen between a building owner and an adjoining owner as to the mode of repairing a defective party-wall was not entitled to take into consideration the previous history of the wall ; and that dampness in a wall is not a defect within the meaning of the Act unless it renders the wall less effective for the purposes for which it is used or intended to be used. And in *Selby* v. *Whitbread & Co.* (1917), 1 K.B. 736, where it was held that an easement of support to buildings by buildings may be acquired by *prescription,* but that the statutory rights of protection which the plaintiffs as adjoining owners acquired under the London Building Act, 1894 (upon the service of a party-wall notice by the defendants) were inconsistent with, but superseded, their common law rights of support from the defendant's building and that a claim therefore for damages at common law could not be sustained. That is to say, that in London the common law right of support, or a right of support acquired by prescription, is superseded under the London Building Act, 1930.

Definitions given in the London Building Act, 1930.

The definitions of the term " party-wall " as given under Section 5 of the London Building Act, 1930, are worthy of notice since they appear to have been settled with reference to ownership and occupation as well as to user. " Party-" wall " means:—

(*a*) A wall forming part of a building and used, or constructed to be used, for separation of adjoining buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons ; or

(*b*) A wall forming part of a building and standing *to a greater extent than the projection of the footings* on lands of different owners.

The term "party-wall" defined.

The term "party-wall" was, until the advent of the Law of Property Act, 1925, definitely used in four different senses as follows:—

(1) A wall of which the adjoining owners are tenants in common. This, in the words of Fry, J., in *Watson* v. *Gray* (1880), 49 L. J., Ch. 243, "is the most "common and primary meaning of the term."

The same meaning is applied to the term "party-wall" wherever it is found in the by-laws of local authorities.

(2) A wall (theoretically) divided longitudinally into two strips, one belonging to each of the neighbouring owners (see *Matts* v. *Hawkins* (1813), 5 Taunt. 20).

In this usage of the term the owners are not tenants in common even if the wall was erected at the joint expense of them both, but where there has been a common user of such a wall which was erected at the common expense of the two parties, then, in the absence of any other evidence, this is sufficient evidence that the wall is held by the two parties as tenants in common. It follows that if the position of the boundary line has been lost where a wall separating adjoining properties is used in common by the owners, there is in that common or mutual user presumptive evidence that the wall and the ground on which it stands belong equally to the adjoining owners.

(3) A wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right acquired by the other owner to have it maintained

as a party-wall between the two buildings. The same considerations apply as in the case of a divided wall.

A wall may be a party-wall for the first part of its height, and above that height become the separate property of one of the adjoining owners (see *Weston* v. *Arnold* (1873), 43 L. J., Ch. 123).

A wall may be laterally a party-wall only for such distance as it is used by both owners and no further (see *Knight* v. *Pursell* (1879), 48 L. J., Ch. 395.

(4) A wall divided longitudinally into two moieties, each moiety being subject to a cross-easement in favour of the other moiety ; that is, where the position of the boundary line has been preserved.

In general it may be said that the term " party-wall " means, and may be properly applied to, any wall which separates adjoining lands belonging to different owners. And in passing it may be well to recall that in *Green* v. *Eales* (1841), 2 Q.B. 225, it was held that a wall between two adjoining houses was, legally speaking, an external wall as far as its part ownership could be assessed because the external parts of premises are those which form the enclosure of them ; and that it is immaterial whether those parts are exposed to the atmosphere or rest upon and adjoin some other building. In *Goldfoot* v. *Welch* (1914), 1 Ch. 213, it was held that the demise of a room includes the external walls enclosing the room.

The Law of Property Act, 1925.

Sections 1 (6) and 34 (2) of the Law of Property Act, 1925, enact that a legal estate cannot subsist or be created in an undivided share in land. Further, that all tenancies in common of land, in so far as legal interests are concerned, have been abolished. Consequently a party-wall cannot now be held in common by adjoining owners, and hence it follows that the first sense of the term " party-wall," given

above, namely, that a party-wall is a wall of which the adjoining owners are tenants in common, has in effect become obsolete, and the signification of the term " party-" wall " is now restricted to a wall falling within one of the three other senses given above. So in cases where a wall was held in common before 1926, and also in cases of a disposition or other arrangement made after 1925 (under which a tenancy in common would be created if such a holding was permissible), the wall is for legal purposes considered as divided equally between the respective owners, and the owner of each part has such right to support and user over the remainder of the wall as may be requisite for conferring rights corresponding to those which would have existed if a valid tenancy in common had been created. All of which is to be found in Section 38 (1) of the Act of 1925.

Further, Section 38 (2) of the Act states:—

" (2) Any person interested may, in case of dispute, apply to the Court for an order declaring the rights and interests under this section of the persons interested in any such party structure, and the Court may make such order as it thinks fit."

The relevant provisions contained in Schedule 1, Part V., are to a like effect:—

" (1) Where, immediately before the commencement of this Act a party-wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act.

. . . . .

(3) Any person interested may apply to the Court for an order declaring the rights and interests under this part of this Schedule of the persons interested

in any such party structure or open space, or generally may apply in relation to the provisions of this part of this Schedule, and the Court may make such order as it thinks fit."

By Section 39 of the Act of 1925 the transitional provisions contained in the First Schedule of the Act are to have effect. The provisions of the First Schedule subjecting land held at the commencement of the Act in undivided shares to a trust for sale do not apply to party structures. (See Part IV., paragraph 3, of the Schedule.)

It will be seen that adjoining owners who would formerly have been tenants in common of the party-wall dividing their properties must now therefore be regarded as owning each a moiety of such wall in severalty, but with such right to support and user over the rest of the wall as may be requisite for conferring rights corresponding to those which would have subsisted if the wall had been held by them as tenants in common. Nevertheless, it must be understood that even with the Act as it is, it is still necessary for the purpose of ascertaining the rights of adjoining owners in respect to a party-wall to assume a hypothetical tenancy in common for the purposes of the Law of Property Act, 1925 ; for where a wall is built on land of adjoining owners and it is not known how much land each has contributed for the wall, it is still presumed that the wall belongs to the adjoining owners equally and severally. Moreover, the common user by adjoining owners of a party-wall separating their properties is *prima facie* evidence that the wall and the land on which it stands would belong equally and severally to them ; and each of them would have a remedy for any injury done to the wall by the other if the injury occasioned him damage or nuisance. Again, it should be understood that the ownership of a party-wall which was erected at the joint expense of the two owners of it depends on and follows the ownership of the land on which it stands ; that is, if the amount of land contributed by the owners is known, for there is no transfer of the property of either owner to the other, they continue to

be the several owners of their respective lands as before, and each owner can deal with his part of the wall as he pleases, short of committing any act of negligence ; and in general his neighbour has no remedy unless he has acquired an easement of support by prescription for his part of the wall. It is always a question for the Court to decide to what extent a party-wall is in fact built on each side of the boundary between adjoining owners' property and any minute inaccuracy of measurement is to be disregarded. (See *Reading* v. *Barnard* (1827), Mood & M. 71.)

Anent boundary lines, it was held that where the parties had agreed to refer the question of a boundary to an independent surveyor, and were present when the boundary was staked out by the referee, that amounted to assent. (See *Taylor* v. *Parry* (1840), 1 Manning & Granger's Reports, 604.)

Apart from the right of support, either owner may pull down that portion of the party-wall which stands on his own land provided he does not cause unnecessary damage to his neighbour's property and that the work which is done is done without negligence or injury. If he cannot ensure this, he must shore up the adjoining owner's property even if the property be in a ruinous condition. An owner pulling down his part of the party-wall does not, it appears, need to give notice of his intention to do so to the owner of the other part, though, of course, it is wise to give notice.

Right of Support.

The right of the continuance of the support both lateral and vertical afforded by one building to another has long been recognised as an easement ; so if an easement exists it prevents interference to a great extent by either owner of the party-wall. If, therefore, the owner of the servient building which affords support to the dominant building pulls down the former so that the latter falls or is damaged, the servient owner is liable in damages. (See *Jones* v. *Pritchard* (1908), 1 Ch. 630.)

No right of support, of course, exists if the buildings do not adjoin each other. In *Solomon* v. *Vintners' Co.* (1859), 4 H. & H. 585, the houses of the plaintiff and defendant were separated by a house belonging to a third person, all three houses having been for a considerable number of years out of the perpendicular and depending on each other for support. It was held that, there being no connection between the houses of the plaintiff and the defendant, the plaintiff could not recover damages from the defendant for pulling down his house, in consequence of which the house adjoining the defendant's house fell, thereby depriving the plaintiff's house of support.

No proof that a right of support exists is required where an owner pulls down his own wall or his part of a wall negligently and in such a way as to cause damage to his neighbour. The neighbour may succeed in an action for such damage and negligence, and the owner causing the damage will be held liable even though the property damaged could not have lasted long ; for that is only a matter to be taken into account in measuring the damages. What is clear is that no person has the right to accelerate the fall of his neighbour's building ; therefore every owner of a building must so keep his building that no one will be injured by its dangerous state or because it constitutes a nuisance or by its falling. He must shore it up. Of course he can remove it altogether if the right of support to the adjoining building is not affected.

In *St. Anne's Well Brewery Co.* v. *Roberts and Others* (1928), K. L. G. R. 238, the defendants were the owners of a part of the ancient city wall of Exeter, which also formed part of the wall of an ancient inn belonging to the plaintiffs. At some period unknown excavations had been made in the wall, which was more than 6 feet thick, to form recesses on either side of the fireplace in the kitchen of the inn. In 1927 a large part of the wall at the part belonging to the defendants collapsed, completely demolishing the inn. It was held that the defendants, as owners, were under a duty to keep the wall in such a state of repair that

their neighbours would not be injured by the fall of it ; that the plaintiffs had not been guilty of negligence in failing to discover the condition of the wall, and that the action was maintainable against the owners, and not only against the occupiers of the ground on which the wall stood.

Subject to the easement of support already referred to, the owner, then, of each part of a party-wall may deal with his part as he pleases so long as he exercises due care and does not cause any unnecessary inconvenience or nuisance to the owner of the other part.

Neither owner of a party-wall may proceed to underpin it unless it can be done without injury to the party-wall and what else it supports. (See *Standard Bank of British South America* (*Africa*) v. *Stokes* (1878), 9 Ch. 68.) Moreover, it is required that any allegations in regard to the state of a party-wall must be substantiated. In *Sack* v. *Jones* (1925), Ch. 235, the plaintiff and the defendant were owners of adjoining houses separated by a party-wall and with implied mutual rights of support. The plaintiff alleged that, owing to lack of repair and of underpinning, the defendant's house was subsiding, dragging the party-wall over and thereby damaging his house. It was held that the plaintiff's allegations were not substantiated by the evidence. Even if they had been substantiated, the plaintiff, it appears, would have had no cause of action because of the advanced state of natural decay of the houses.

Reasonable skill and care must be exercised by either of two adjoining owners who uses a party-wall for the purpose of building upon it, or pulls it down for the purpose of rebuilding it, and the liability cannot be escaped by delegating the performance of the duty to a contractor.

Liability to Repair.

The owner of a building is not under any general liability to repair it or to put it in repair. Even if he wishes to let it he can do so whilst it is in a tumbledown condition ;

but in general he is obliged to prevent it becoming dangerous or a nuisance to the public. When the owner of a house lets it furnished, there is an implied warranty of fitness for habitation at the time of the letting ; and in the case of a house which comes within the provisions of the Housing Acts, there is an implied condition that it is at the time of letting in all respects reasonably fit for human habitation ; and there is also an implied undertaking that the landlord shall during the holding keep the house in all respects reasonably fit for human habitation.

The question of the repair of houses has been made more acute by reason of certain recent housing legislation which provides for the demolition of such groups or units of dwelling-houses as have been reported insanitary and after consideration of the local authority concerned have been condemned as insanitary. A local authority is empowered to operate two methods of securing demolition. They can make a clearance order requiring the owner or owners to demolish, or they can make a compulsory order to purchase the land themselves and demolish the buildings upon it forthwith. Also it has long been the case that where a building is a " nuisance," an effectual abatement of the nuisance may involve the pulling down of the premises if they are unfit for habitation or insanitary. In general, it may be said that a local authority whenever it operates its powers to demolish all or so much of a structure as is in a dangerous or neglected condition, or unfit for habitation (because the owner of it will not do what is required of him), is empowered also to carry out any auxiliary work which the demolition makes necessary for public health or safety ; as, for example, the shoring up and hoarding in of buildings. The owner of the building demolished, or partly demolished, must pay all expenses incurred by the local authority, including the cost of the failure of the authority to make good the building or buildings left, and the cost of any damage resulting from the work as carried out. The local authority is not empowered to do any repairs to the adjoining owner's property, but the owner

of the property pulled down may be liable to the adjoining owner if the latter has just cause of complaint. A recent decision of Swift, J., in *Marriott* v. *Minister of Health* (which is summarised on page 764 of the *Justice of the Peace* for November 23rd, 1935), may cause some alarm to local authorities. The local authority concerned were minded to secure the clearance of a certain area by the exercise of their powers of compulsory purchase under the Housing Act, 1930, and proceeded to make a compulsory purchase order. Such an order does not, of course, become effective until its confirmation by the Minister of Health. The applicant (Marriott) objected to the order, and appeared in support of his objection at the local enquiry ; but the order was subsequently confirmed by the Minister, and its validity was challenged on the ground that the Minister had no power to confirm a compulsory purchase order in relation to a site in a clearance area which, in anticipation of the order being made, had already been cleared of buildings by the owner (Marriott) himself. It was held that the local authority concerned (the Nottingham Corporation) could not now say that they were entitled to buy the land in order to demolish houses on it which had already been demolished, and that the compulsory order must be quashed as not being within the powers conferred by the Act.

The pulling down of a single house in a row, or of one of a pair of semi-detached houses is fraught with much risk to the adjoining house or houses. More often than not the party-wall is found to be in a very bad condition, and quite unsuitable to be exposed to climatic ravages. Moreover, in premises which were built many years ago, in times when no by-laws were in force, it is most usual to find that, instead of the party-wall being taken up through the roof and coped or raked and cut to the underside of the continuous slating or tiling of the roof, as must now be done, it is only taken up to a sufficient height to support the purlins carrying the roof. Thus, when the building is taken down, a gap is left in the party-wall,

through which wind and rain will drive if it is left as it is even for a short time ; and if there is no attempt to rebuild the building pulled down, the owner of the building remaining so exposed is obviously placed under a difficulty, or is comparatively at a great cost to remedy it. There is no obligation whatever put upon the owner of the house pulled down to fill in this gap—that is merely because it is a gap or an eyesore—or to do any repairs to the wall itself. It is an external wall of the adjoining building left standing (see *Green* v. *Eales* (1841), 2 Q.B. 285), but the owner of the land cleared is still required to remove or prevent any nuisance originating from his part of the party-wall. So if rain enters by the gap and becomes a nuisance to the adjoining owner, he (the owner of the cleared land) must abate the nuisance, and, further, as already stated, if the adjoining building loses its vertical or lateral right of support by the demolition, then, if damage results, an action lies, and the owner of the building pulled down will be liable in damages to the adjoining owner for support removed or damage done.

Apart from negligence or want of reasonable care, neither owner of a party-wall is under any duty or liability to the other owner for any nuisance or inconvenience caused by the exercise of his rights over the wall, as, for instance, in allowing smoke from his fires to pass through the flues within the party-wall. (See *Jones* v. *Pritchard* (1908), 1 Ch. 630.)

Trespass.

If two persons are owners in severalty of a party-wall either may maintain an action for trespass against the other for an injury done to his portion of the party-wall ; and if either is ousted from the use of his portion of the wall he may bring an action for ejectment against the other. Suppose one of the owners is expelled from user of the party-wall, or that the party-wall is taken down by one of them without the intention to rebuild it, that is trespass. So, too,

if a party-wall is pulled down by one of the owners of it and rebuilt so as to destroy its identity, an action for trespass will lie.

In *Firmstone* v. *Wheeley* (1844), 2 Dow & L. 203, Pollock, C. B., said, if a party-wall is knocked down, the owner may maintain an action for trespass, but he cannot by omitting to rebuild it hold the defendant always responsible for any consequential damage.

Where, however, the intention on pulling down a party-wall is to rebuild it, and the owner pulling down sells the old materials but rebuilds it with new materials, there is no trespass ; though an action for waste might be pursued. But if one of the owners increases the height of a party-wall, or puts upon it any obstruction, the adjoining owner may himself remove the addition or the obstruction as of right.

In *Stedman* v. *Smith* (1857), 8 E. & B. 1, the plaintiff and defendant occupied adjacent plots of ground which were divided by a wall. There was a shed on the defendant's ground contiguous to the wall, the roof of which rested on the top of the wall across the whole width. The defendant took off the coping stones from the top of the wall and heightened the wall, replacing the original coping-stones on the top of the addition. He then built a wash-house contiguous to the wall where the shed had stood, the roof of which occupied the whole width of the top of the wall. He then let a stone into the wall with an inscription on it stating that the wall and the land on which it stood belonged to him. It was held that there was an ouster by the defendant of the plaintiff from possession of the wall upon which the latter could maintain an action for trespass.

A case—a London case—as to flues built against party-walls is of especial interest to surveyors. In *Aerated Bread Co.* v. *Shepherd* (1897), 13 T. L. R. 311, the action was brought for trespass. The wall between the premises was a party-wall within the meaning of the Metropolitan Building Acts, and it was in dispute whether the wall was a party-wall in the sense that there was a common owner-

ship, or whether the wall was (as the judge held) entirely the property of the plaintiffs and subject to easements of support. The London Building Act, 1894, provided that all chimney-flues are to be *surrounded* by new brickwork of a certain thickness. The defendant had put chimney-flues *against* the plaintiffs' wall, and the flues were constructed of actual new bricks on three sides only, the two ends being bonded into the party-wall. The plaintiffs complained that the Building Act of 1894 had not been complied with ; the defendants contended it had, because the party-wall, being sound and in good condition, was to be considered new brickwork within the meaning of the Act ; also the district surveyor had passed the work. North, J., considered that the construction of the enactment was absurd, but held that the defendant had not complied with the Act, which required the brickwork to be new at the time of the construction of the flues. The Act of 1930 repeats these requirements.

Measure of Damage—Trespass.

The measure of damages for injury done by trespass is the depreciation in selling value of the subject-matter of the trespass ; that is, the difference between the money value of the owner's interest before and after the injury. If the trespass is of a trifling nature damages are a sufficient remedy, and damages may be given in trespass even though no loss is suffered by the trespass.

If the granting of an injunction to restrain the trespass would be oppressive it will be refused by the Court, for it is a formidable legal weapon which should never be used on trivial occasions and when no harm has been done. In addition to, or in substitution for, damages, or an injunction, the Court may simply make a declaration that the defendant in committing the act complained of was a trespasser and need not make any order as to cost. (See *Llandudno U.D.C.* v. *Wood* (1889), 2 Ch. 705.)

The Statutes of Limitation.

If any person erects a building so that a wall built entirely on his neighbour's land is used to form one side of the building, that does not give him a right to the wall under the Statutes of Limitation, though an easement of support might possibly be acquired by him, in respect to the wall, in the future. Nor is any title to a wall acquired under the Statutes of Limitation by placing a visible inscription on a boundary wall stating to all the world that the wall belongs to the adjoining owner simply because the inscription has been allowed to remain on the wall.

Contribution by Owners.

Contribution by adjoining owners to the expense of building a party-wall may depend on an express contract between the owners (see *Irving* v. *Turnbull* (1900), 2 Q.B. 129) ; or it may depend on a contract implied from common user of the wall. Also it has been held to be reasonable that a local usage or custom, that an owner of land using as a party-wall for building purposes a wall erected half on the land of the adjoining owner and half on his own land, should contribute to the expense of erecting such wall (see *Robinson* v. *Thompson* (1890), 89 L. T. 137).

In *Stuart* v. *Smith* (1816), 7 Taunt. 158, there was a verbal agreement to pay " what is right and fair " in respect to the building of a party-wall ; and it was held that the agreement could be enforced. In *Christie* v. *Mitchison* (1877), 36 L. T. 621, one of the owners of a party-wall having made use of it, and knowing that money was to be paid to someone for the use of it, and having promised to pay the other owner for the use of it, was held liable to pay for the use of the party-wall.

In general, however, no contribution can be enforced from either of the owners for the repair of a party-wall ; though in an American case it was conceived that where a party-wall falls into such a ruinous state that rebuilding is imperative, and one owner takes upon himself the burden

of carrying out the whole of the work necessary, that the court could compel the other owner to contribute his share, on the ground that the expenditure was in the nature of salvage.

Agreements.

In conclusion I would remind you of some of the agreements commonly entered into between adjoining owners:—

(1) An agreement as to the user and the raising of a party-wall ;

(2) A conveyance for a moiety of a wall so as to make this wall a party-wall ;

(3) A deed of assignment between the owners of adjoining plots to the effect that the wall dividing buildings thereon shall be built at their joint expense, and as a party-wall, half of it to be built on each owner's plot ;

(4) A conveyance on the sale of a plot of land together with the moiety of a wall and that the wall is to be used as a party-wall ;

(5) A conveyance of a building excepting one undivided moiety of one of the outer walls so that such wall may become a party-wall ;

(6) A grant of a right by one owner to the adjoining owner to place the footings of a wall on the latter's land, the owner building the wall to build it as a party-wall, each owner sharing the cost of the wall.